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109TH CONGRESS
2^D SESSION

H. R. 5112

[Report No. 109-445]

To provide for reform in the operations of the executive branch.

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mr. TOM DAVIS of Virginia (for himself, Mr. WAXMAN, Mr. SHAYS, Mr. LANTOS, Mr. GUTKNECHT, Mr. OWENS, Mr. PLATTS, Mr. TOWNS, Mrs. MILLER of Michigan, Mrs. MALONEY, Mr. ISSA, Mr. CUMMINGS, Mr. DENT, Mr. KUCINICH, Ms. FOXX, Mr. CLAY, Ms. WATSON, Mr. LYNCH, Mr. VAN HOLLEN, Mr. HIGGINS, Ms. NORTON, Mr. KANJORSKI, and Mr. DAVIS of Illinois) introduced the following bill; which was referred to the Committee on Government Reform

APRIL 27, 2006

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To provide for reform in the operations of the executive
branch.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Executive Branch Re-
3 form Act of 2006”.

4 **SEC. 2. REQUIREMENTS RELATING TO SIGNIFICANT CON-**
5 **TACTS.**

6 (a) IN GENERAL.—The Ethics in Government Act of
7 1978 (5 U.S.C. App. 4) is amended by adding at the end
8 the following new title:

9 **“TITLE VI—EXECUTIVE BRANCH**
10 **DISCLOSURE OF SIGNIFICANT**
11 **CONTACTS**

12 **“SEC. 601. RECORDING AND REPORTING BY CERTAIN EXEC-**
13 **UTIVE BRANCH OFFICIALS OF SIGNIFICANT**
14 **CONTACTS MADE TO THOSE OFFICIALS.**

15 “(a) IN GENERAL.—Not later than 30 days after the
16 end of a calendar quarter, each covered executive branch
17 official shall make a record of, and file with the Office
18 of Government Ethics a report on, any significant contacts
19 during the quarter between the covered executive branch
20 official and any private party relating to an official govern-
21 ment action. If no such contacts occurred, each such offi-
22 cial shall make a record of, and file with the Office a re-
23 port on, this fact, at the same time.

24 “(b) CONTENTS OF RECORD AND REPORT.—Each
25 record made, and each report filed, under subsection (a)
26 shall contain—

1 “(1) the name of the covered executive branch
2 official;

3 “(2) the name of each private party who had a
4 significant contact with that official; and

5 “(3) for each private party so named, a sum-
6 mary of the nature of the contact, including—

7 “(A) the date of the contact;

8 “(B) the subject matter of the contact and
9 the specific executive branch action to which the
10 contact relates; and

11 “(C) if the contact was made on behalf of
12 a client, the name of the client.

13 “(c) WITHHOLDING FOIA-EXEMPT INFORMATION.—
14 This section does not require the filing with the Office of
15 Government Ethics of information that is exempt from
16 public disclosure under section 552(b) of title 5, United
17 States Code (popularly referred to at the “Freedom of In-
18 formation Act”).

19 **“SEC. 602. AUTHORITIES AND RESPONSIBILITIES OF OF-**
20 **FICE OF GOVERNMENT ETHICS.**

21 “(a) IN GENERAL.—The Director of the Office of
22 Government Ethics shall—

23 “(1) promulgate regulations to implement this
24 title, provide guidance and assistance on the record-
25 ing and reporting requirements of this title, and de-

1 velop common standards, rules, and procedures for
2 compliance with this title;

3 “(2) review, and, where necessary, verify the ac-
4 curacy, completeness, and timeliness of reports;

5 “(3) develop filing, coding, and cross-indexing
6 systems to carry out the purpose of this title, includ-
7 ing—

8 “(A) a publicly available list of all private
9 parties who made a significant contact; and

10 “(B) computerized systems designed to
11 minimize the burden of filing and maximize
12 public access to reports filed under this title;

13 “(4) make available for public inspection and
14 copying at reasonable times the reports filed under
15 this title;

16 “(5) retain reports for a period of at least 6
17 years after they are filed;

18 “(6) compile and summarize, with respect to
19 each reporting period, the information contained in
20 reports filed with respect to such period in a clear
21 and complete manner;

22 “(7) notify any covered executive branch official
23 in writing that may be in noncompliance with this
24 title; and

1 “(8) notify the United States Attorney for the
2 District of Columbia that a covered executive branch
3 official may be in noncompliance with this title, if
4 the covered executive branch official has been noti-
5 fied in writing and has failed to provide an appro-
6 priate response within 60 days after notice was
7 given under paragraph (7).

8 **“SEC. 603. PENALTIES.**

9 “Whoever knowingly fails to—

10 “(1) remedy a defective filing within 60 days
11 after notice was given under paragraph (7); or

12 “(2) comply with any other provision of this
13 title;

14 shall, upon proof of such knowing violation by a prepon-
15 derance of the evidence, be subject to a civil fine of not
16 more than \$50,000, depending on the extent and gravity
17 of the violation.

18 **“SEC. 604. DEFINITIONS.**

19 “In this title:

20 “(1) COVERED EXECUTIVE BRANCH OFFI-
21 CIAL.—The term ‘covered executive branch official’
22 means—

23 “(A) any officer or employee serving in a
24 position in level I, II, III, IV, or V of the Exec-

1 utive Schedule, as designated by statute or Ex-
2 ecutive order;

3 “(B) any member of the uniformed serv-
4 ices whose pay grade is at or above O–7 under
5 section 201 of title 37, United States Code;

6 “(C) any officer or employee serving in a
7 position of a confidential, policy-determining,
8 policy-making, or policy-advocating character
9 described in section 7511(b)(2)(B) of title 5,
10 United States Code; and

11 “(D) any officer or employee serving in a
12 position of a confidential, policy-determining,
13 policy-making, or policy advocating character,
14 or any other individual functioning in the ca-
15 pacity of such an officer or employee, in the Ex-
16 ecutive Office of the President or the Office of
17 the Vice President, but does not include the
18 President or Vice President or the chief of staff
19 of the President or Vice President.

20 “(2) SIGNIFICANT CONTACT.—The term ‘sig-
21 nificant contact’ means oral or written communica-
22 tion (including electronic communication) that is
23 made by a private party to a covered executive
24 branch official in which such private party seeks to
25 influence, or obtain nonpublic information about, of-

1 ficial action by any officer or employee of the execu-
2 tive branch of the United States.

3 “(3) PRIVATE PARTY.—The term ‘private party’
4 means any person or entity, but does not include a
5 Federal, State, or local government official or a per-
6 son representing such an official.”.

7 (b) EFFECTIVE DATE.—

8 (1) IN GENERAL.—Title VI of the Ethics in
9 Government Act of 1978, as added by this section,
10 takes effect 1 year after the date of the enactment
11 of this Act, except as provided in paragraph (2).

12 (2) INITIAL REGULATIONS.—The initial regula-
13 tions required by section 602 of that Act shall be
14 promulgated—

15 (A) in draft form, not later than 270 days
16 after the date of the enactment of this Act; and

17 (B) in final form, not later than 1 year
18 after the date of the enactment of this Act.

19 **SEC. 3. REQUIREMENTS RELATING TO STOPPING THE RE-**
20 **VOLVING DOOR.**

21 The Ethics in Government Act of 1978 (5 U.S.C.
22 App. 4) is amended by adding at the end the following
23 new title:

1 **“TITLE VII—STOPPING THE**
2 **REVOLVING DOOR**

3 **“SEC. 701. TWO-YEAR COOLING-OFF PERIOD FOR PERSONS**
4 **LEAVING GOVERNMENT SERVICE.**

5 “(a) IN GENERAL.—A covered executive branch offi-
6 cial shall not, for a period of two years after the termi-
7 nation of his employment, engage in any conduct that
8 would be prohibited under subsections (c) or (d) of section
9 207 of title 18, United States Code, if it occurred within
10 one year after the termination of his employment.

11 “(b) NO EFFECT ON SECTION 207.—This section
12 does not expand, contract, or otherwise affect the applica-
13 tion of any waiver or criminal penalties under section 207
14 of title 18, United States Code.

15 **“SEC. 702. PROHIBITION ON NEGOTIATION OF FUTURE EM-**
16 **PLOYMENT.**

17 “(a) PROHIBITION.—A covered executive branch offi-
18 cial shall not participate in any official matter in which,
19 to the official’s knowledge, a person or organization with
20 whom the official is negotiating or has any arrangement
21 concerning prospective employment has a financial inter-
22 est, unless a waiver has been granted under subsection (b).

23 “(b) WAIVERS ONLY WHEN EXCEPTIONAL CIR-
24 CUMSTANCES EXIST.—A waiver to subsection (a) is not
25 available, and shall not be granted, to any individual ex-

1 cept in a case which the Government official responsible
2 for the individual's appointment as a covered executive
3 branch official determines that exceptional circumstances
4 exist. Whenever such a determination is made, the Direc-
5 tor of the Office of Government Ethics shall independently
6 investigate and review the circumstances relating to the
7 determination, and the waiver shall not take effect until
8 the date on which the Director certifies in writing that
9 exceptional circumstances exist.

10 **“SEC. 703. COOLING-OFF PERIOD FOR CERTAIN PERSONS**
11 **ENTERING GOVERNMENT SERVICE.**

12 “(a) IN GENERAL.—A covered executive branch offi-
13 cial shall not engage in conduct relating to a covered entity
14 that would be prohibited under section 208 of title 18,
15 United States Code, if the official had a financial interest
16 in the covered entity, unless a waiver has been granted
17 under subsection (b).

18 “(b) WAIVER.—An agency's designated ethics officer
19 may, if the Director of the Office of Government Ethics
20 approves, waive the prohibition in subsection (a) with re-
21 spect to a covered executive branch official of that agency
22 upon a determination that the relationship between the
23 covered executive branch official and the covered entity is
24 not so substantial as to be deemed likely to affect the in-

1 tegrity of the services that the Government may expect
2 from the official.

3 “(c) DEFINITION.—In this section, the term ‘covered
4 entity’ means an entity—

5 “(1) in which the official, within the previous 2
6 years, served as an officer, director, trustee, general
7 partner, or employee; or

8 “(2) for which the official, within the previous
9 2 years, worked as a lobbyist, lawyer, or other rep-
10 resentative.

11 “(d) NO EFFECT ON SECTION 208.—This section
12 does not expand, contract, or otherwise affect the applica-
13 tion of any criminal penalties under section 208 of title
14 18, United States Code.

15 **“SEC. 704. PENALTIES.**

16 “Whoever violates section 701, 702, or 703 of this
17 title shall, upon proof of such knowing violation by a pre-
18 ponderance of the evidence, be subject to a civil fine of
19 not more than \$100,000, depending on the extent and
20 gravity of the violation.

21 **“SEC. 705. DEFINITION.**

22 “In this title, the term ‘covered executive branch offi-
23 cial’ means—

24 “(1) any officer or employee serving in a posi-
25 tion in level I, II, III, IV, or V of the Executive

1 Schedule, as designated by statute or Executive
2 order;

3 “(2) any member of the uniformed services
4 whose pay grade is at or above O–7 under section
5 201 of title 37, United States Code;

6 “(3) any officer or employee serving in a posi-
7 tion of a confidential, policy-determining, policy-
8 making, or policy-advocating character described in
9 section 7511(b)(2)(B) of title 5, United States Code;

10 “(4) any officer or employee serving in a posi-
11 tion of a confidential, policy-determining, policy-
12 making, or policy advocating character, or any other
13 individual functioning in the capacity of such an of-
14 ficer or employee, in the Executive Office of the
15 President or the Office of the Vice President; and

16 “(5) the Vice President.”.

17 **SEC. 4. ADDITIONAL PROVISIONS RELATING TO PROCURE-**
18 **MENT OFFICIALS.**

19 (a) ELIMINATION OF LOOPHOLES THAT ALLOW
20 FORMER FEDERAL OFFICIALS TO ACCEPT COMPENSA-
21 TION FROM CONTRACTORS OR RELATED ENTITIES.—Sec-
22 tion 27(d) of the Office of Federal Procurement Policy
23 Act (41 U.S.C. 423(d)) is amended—

24 (1) in paragraph (1)—

1 (A) by striking “or consultant” and insert-
2 ing “consultant, lawyer, or lobbyist”;

3 (B) by striking “one year” and inserting
4 “two years”; and

5 (C) in subparagraph (C), by striking “per-
6 sonally made for the Federal agency—” and in-
7 serting “participated personally and substan-
8 tially in—”; and

9 (2) by amending paragraph (2) to read as fol-
10 lows:

11 “(2) Paragraph (1) shall not prohibit a former
12 official of a Federal agency from accepting com-
13 pensation from any division or affiliate of a con-
14 tractor that does not produce the same or similar
15 products or services as the entity of the contractor
16 that is responsible for the contract referred to in
17 subparagraph (A), (B), or (C) of such paragraph if
18 the agency’s designated ethics officer determines
19 that—

20 “(A) the offer of compensation is not a re-
21 ward for any action described in paragraph (1);
22 and

23 “(B) acceptance of the compensation is ap-
24 propriate and will not affect the integrity of the
25 procurement process.”.

1 (b) REQUIREMENT FOR FEDERAL PROCUREMENT
2 OFFICERS TO DISCLOSE JOB OFFERS MADE TO REL-
3 ATIVES.—Section 27(c)(1) of such Act (41 U.S.C.
4 423(c)(1)) is amended by inserting after “that official”
5 the following: “or for a relative of that official (as defined
6 in section 3110 of title 5, United States Code),”.

7 (c) REQUIREMENT ON AWARD OF GOVERNMENT
8 CONTRACTS TO FORMER EMPLOYERS.—Section 27 of
9 such Act (41 U.S.C. 423) is amended by adding at the
10 end the following new subsection:

11 “(i) PROHIBITION ON INVOLVEMENT BY CERTAIN
12 FORMER CONTRACTOR EMPLOYEES IN PROCURE-
13 MENTS.—An employee of the Federal Government who is
14 a former employee of a contractor with the Federal Gov-
15 ernment shall not be personally and substantially involved
16 with any award of a contract to the employee’s former em-
17 ployer, or the administration of such a contract, for the
18 two-year period beginning on the date on which the em-
19 ployee leaves the employment of the contractor.”.

20 (d) REGULATIONS.—Section 27 of such Act (41
21 U.S.C. 423) is further amended by adding at the end of
22 the following new subsection:

23 “(j) REGULATIONS.—The Administrator, in consulta-
24 tion with the Director of the Office of Government Ethics,
25 shall—

1 “(1) promulgate regulations to carry out and
2 ensure the enforcement of this section; and

3 “(2) monitor and investigate individual and
4 agency compliance with this section.”.

5 **SEC. 5. PROHIBITION ON UNAUTHORIZED EXPENDITURE**
6 **OF FUNDS FOR PUBLICITY OR PROPAGANDA**
7 **PURPOSES.**

8 (a) PROHIBITION.—Chapter 13 of title 31, United
9 States Code, is amended by adding at the end the fol-
10 lowing new section:

11 **“§ 1355. Prohibition on unauthorized expenditure of**
12 **funds for publicity or propaganda pur-**
13 **poses**

14 “An officer or employee of the United States Govern-
15 ment may not make or authorize an expenditure or obliga-
16 tion of funds for publicity or propaganda purposes within
17 the United States unless authorized by law.”.

18 (b) CLERICAL AMENDMENT.—The table of sections
19 for chapter 13 of such title is amended by adding at the
20 end the following new item:

“1355. Prohibition on unauthorized expenditure of funds for propa-
ganda purposes.”.

1 **SEC. 6. REQUIREMENT FOR DISCLOSURE OF FEDERAL**
2 **SPONSORSHIP OF ALL FEDERAL ADVER-**
3 **TISING OR OTHER COMMUNICATION MATE-**
4 **RIALS.**

5 (a) **REQUIREMENT.**—Each advertisement or other
6 communication paid for by an Executive agency, either di-
7 rectly or through a contract awarded by the Executive
8 agency, shall include a prominent notice informing the tar-
9 get audience that the advertisement or other communica-
10 tion is paid for by that Executive agency.

11 (b) **ADVERTISEMENT OR OTHER COMMUNICATION.**—
12 In this section, the term “advertisement or other commu-
13 nication” includes—

14 (1) an advertisement disseminated in any form,
15 including print or by any electronic means; and

16 (2) a communication by an individual in any
17 form, including speech, print, or by any electronic
18 means.

19 (c) **EXECUTIVE AGENCY.**—In this section, the term
20 “Executive agency” has the meaning provided in section
21 105 of title 5, United States Code.

22 **SEC. 7. ELIMINATION OF “PSEUDO” CLASSIFICATION.**

23 (a) **REPORTS ON THE PROLIFERATING USE OF**
24 **“PSEUDO” CLASSIFICATION DESIGNATIONS.**—

25 (1) **REPORT BY FEDERAL AGENCIES.**—Not later
26 than six months after the date of the enactment of

1 this Act, each federal agency shall submit to the Ar-
2 chivist of the United States and the congressional
3 committees described in subsection (d) a report de-
4 scribing the use of “pseudo” classification designa-
5 tions.

6 (2) MATTERS COVERED.—Each such agency
7 shall report on, at a minimum, the following:

8 (A) The number of “pseudo”classification
9 designation policies used by the agency.

10 (B) Any existing guidance, instruction, di-
11 rective, or regulations regarding the agency’s
12 use of “pseudo” classification designations.

13 (C) The number and level of experience
14 and training of Federal agency, office, and con-
15 tractor personnel authorized to make “pseudo”
16 classification designations.

17 (D) The cost of placing and maintaining
18 information under each “pseudo” classification
19 designation.

20 (E) The extent to which information
21 placed under “pseudo” classification designa-
22 tions has subsequently been released under sec-
23 tion 552 of title 5, United States Code (popu-
24 larly known as the Freedom of Information
25 Act).

1 (F) The extent to which “pseudo” classi-
2 fication designations have been used to withhold
3 from the public information that is not author-
4 ized to be withheld by Federal statute, or by an
5 Executive order relating to the classification of
6 national security information.

7 (G) The statutory provisions described in
8 subsection (c).

9 (3) REPORT BY THE ARCHIVIST OF THE
10 UNITED STATES.—Not later than 9 months after the
11 date of the enactment of this Act, the Archivist of
12 the United States shall issue to the congressional
13 committees described in subsection (d) a report on
14 the use of “pseudo” classification designations
15 across the executive branch that is based on the in-
16 formation provided by agencies, as well as input
17 from the Director of National Intelligence, Federal
18 agencies, offices, and contractors. All federal agen-
19 cies, offices, and contractors shall cooperate fully
20 and promptly with all requests by the Archivist in
21 the fulfillment of this paragraph.

22 (4) NOTICE AND COMMENT.—The Archivist
23 shall provide notice and an opportunity for public
24 comment on the report.

1 (b) ELIMINATION OF “PSEUDO” CLASSIFICATION
2 DESIGNATIONS.—

3 (1) REGULATIONS.—Not later than 15 months
4 after the date of the enactment of this Act, the Ar-
5 chivist of the United States shall promulgate regula-
6 tions banning the use of “pseudo” classification des-
7 ignations.

8 (2) STANDARDS FOR INFORMATION CONTROL
9 DESIGNATIONS.—If the Archivist determines that
10 there is a need for some agencies to use information
11 control designations to safeguard information prior
12 to review for disclosure, beyond those designations
13 established by statute or by an Executive Order re-
14 lating to the classification of national security infor-
15 mation, the regulations under paragraph (1) shall
16 establish standards for the use of those designations
17 by agencies. Such standards shall address, at a min-
18 imum, the following issues:

19 (A) Standards for utilizing the information
20 control designations in a manner that is nar-
21 rowly tailored to maximize public access to in-
22 formation.

23 (B) Procedures for providing specified
24 Federal officials with authority to utilize the in-

1 formation control designations, including train-
2 ing and certification requirements.

3 (C) Categories of information that may be
4 assigned the information control designations.

5 (D) The duration of the information con-
6 trol designations and the process by which they
7 will be removed.

8 (E) Procedures for identifying, marking,
9 dating, and tracking information assigned the
10 information control designations, including the
11 identity of officials making the designations.

12 (F) Specific limitations and prohibitions
13 against using the information control designa-
14 tions.

15 (G) Procedures for members of the public
16 to challenge the use of the information control
17 designations.

18 (H) The manner in which the use of the
19 information control designations relates to the
20 procedures of each agency or office under sec-
21 tion 552 of title 5, United States Code.

22 (3) REGULATION TO CONSTITUTE SOLE AU-
23 THORITY.—A regulation promulgated pursuant to
24 this subsection shall constitute the sole authority by
25 which Federal agencies, offices, or contractors are

1 permitted to control information for the purposes of
2 safeguarding information prior to review for disclo-
3 sure, other than authority granted by Federal stat-
4 ute or by an Executive order relating to the classi-
5 fication of national security information.

6 (c) REVIEW OF STATUTORY BARRIERS TO PUBLIC
7 ACCESS INFORMATION.—

8 (1) REVIEW OF STATUTES.—As part of the re-
9 port required under subsection (a)(3), the Archivist
10 shall examine existing Federal statutes that allow
11 Federal agencies, offices, or contractors to control,
12 protect, or otherwise withhold information based on
13 security concerns.

14 (2) RECOMMENDATIONS.—The report shall
15 make recommendations on potential changes to the
16 Federal statutes examined under paragraph (1) that
17 would improve public access to information governed
18 by such statutes.

19 (d) DEFINITIONS.—In this section:

20 (1) The term “congressional committees”
21 means the Committees on Government Reform, Ju-
22 diciary, Homeland Security, and Appropriations of
23 the House of Representatives and the Committees
24 on Homeland Security and Governmental Affairs,
25 Judiciary, and Appropriations of the Senate.

1 (2) The term “‘pseudo’ classification designa-
2 tions” means information control designations, in-
3 cluding “sensitive but unclassified” and “for official
4 use only”, that are not defined by Federal statute,
5 or by an Executive order relating to the classifica-
6 tion of national security information, but that are
7 used to manage, direct, or route Government infor-
8 mation, or control the accessibility of Government
9 information, regardless of its form or format.

10 **SEC. 8. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.**

11 Chapter 23 of title 5, United States Code, is amended
12 by adding after section 2303 the following new section:

13 **“§ 2303a. National security whistleblower rights**

14 “(a) PROHIBITION OF REPRISALS.—In addition to
15 any rights provided in Title VII of Public Law 105–272,
16 section 2303 of title 5, United States Code, or any other
17 law, an employee or applicant for employment of a covered
18 agency may not be discharged, demoted, or otherwise dis-
19 criminated against, including denying, suspending, or re-
20 voking a security clearance or otherwise restricting access
21 to classified or sensitive information, as a reprisal for dis-
22 closing covered information to an authorized Member of
23 Congress or to an authorized official of an executive agen-
24 cy, the Department of Justice, or the Inspector General
25 of the employee’s employing covered agency.

1 “(b) INVESTIGATION OF COMPLAINTS.—An employee
2 or applicant for employment of a covered agency who be-
3 lieves he has been subjected to a reprisal prohibited by
4 subsection (a) may submit a complaint to the Inspector
5 General and head of the covered agency. The Inspector
6 General shall investigate the complaint and, unless the In-
7 spector General determines that the complaint is frivolous,
8 submit a report of the findings of the investigation within
9 180 days to the employee or applicant for employment and
10 the head of the covered agency.

11 “(c) REMEDY.—

12 “(1) Within 210 days of the filing of the com-
13 plaint, the head of the covered agency shall issue an
14 order accepting or rejecting the complaint, or por-
15 tions thereof, taking into consideration the report
16 issued by the Inspector General under subsection
17 (b), if any. If the head of the covered agency accepts
18 the complaint, he shall implement corrective action
19 to return the complainant, as nearly as possible, to
20 the position he would have held had the reprisal not
21 occurred, including voiding any directive or order de-
22 nying, suspending, or revoking a security clearance
23 or otherwise restricting access to classified or sen-
24 sitive information that constituted a reprisal, as well
25 as providing back pay and related benefits, medical

1 costs incurred, travel expenses, and any other rea-
2 sonable and foreseeable consequential damages in-
3 cluding attorney's fees and costs. If the head of the
4 covered agency rejects the complaint, he shall issue
5 a report to the employee or applicant for employ-
6 ment detailing the reasons for the rejection.

7 “(2)(A) If the head of the covered agency, in
8 the process of implementing corrective action under
9 (c)(1), voids a directive or order denying, sus-
10 pending, or revoking a security clearance or other-
11 wise restricting access to classified or sensitive infor-
12 mation that constituted a reprisal, the head of the
13 covered agency may re-initiate procedures to issue a
14 directive or order denying, suspending, or revoking
15 a security clearance or otherwise restricting access
16 to classified or sensitive information only if those re-
17 initiated procedures are based exclusively on national
18 security concerns and are unrelated to the actions
19 constituting the original reprisal.

20 “(B) In any case in which the head of a covered
21 agency re-initiates procedures under (2)(A), the
22 head of the covered agency shall issue an unclassi-
23 fied report to its IG and authorized members of
24 Congress (with a classified annex if necessary), de-
25 tailing the circumstances of the agency's re-initiated

1 procedures and describing the manner in which
2 those procedures are based exclusively on national
3 security concerns and are unrelated to the actions
4 constituting the original reprisal. The head of the
5 covered agency shall also provide periodic updates to
6 the IG and authorized members of Congress detail-
7 ing any significant actions taken as a result of those
8 procedures, and shall respond promptly to inquiries
9 from authorized Members of Congress regarding the
10 status of those procedures.

11 “(3) If the head of the covered agency has not
12 accepted or rejected the complaint within 210 days
13 of the filing of the complaint, and there is no show-
14 ing that such delay is due to the bad faith of the
15 complainant, the complainant shall be deemed to
16 have exhausted his or her administrative remedies
17 with respect to the complaint, and the complainant
18 may bring an action at law or equity for de novo re-
19 view to seek any relief described in (c)(1) in the ap-
20 propriate district court of the United States, which
21 shall have jurisdiction over such action without re-
22 gard to the amount in controversy. A petition to re-
23 view a final decision under this subsection shall be
24 filed in the United States Court of Appeals for the
25 Federal Circuit.

1 “(4) The complainant may obtain review of any
2 order issued under this section in the appropriate
3 district court of the United States or the United
4 States Court of Appeals for the Federal Circuit. No
5 petition seeking such review may be filed more than
6 60 days after issuance of the order by the head of
7 the agency. Review shall conform to chapter 7 of
8 title 5. A petition to review a final decision of a dis-
9 trict court under this subsection shall be filed in the
10 United States Court of Appeals for the Federal Cir-
11 cuit.

12 “(5)(A) If, in any action for damages or relief
13 under subsections (c)(3) or (c)(4), an executive
14 branch agency moves to withhold information from
15 discovery based on a claim that disclosure would be
16 inimical to national security by asserting the privi-
17 lege commonly referred to as the “state secrets privi-
18 lege,” and if the assertion of such privilege prevents
19 the plaintiff from establishing an element in support
20 of the plaintiff’s claim, the court shall resolve the
21 disputed issue of fact or law in favor of the plaintiff,
22 provided that an inspector general investigation
23 under subsection (b) has resulted in substantial con-
24 firmation of that element, or those elements, of the
25 plaintiff’s claim.

1 “(B) In any case in which an executive branch
2 agency asserts the privilege commonly referred to as
3 the “state secrets privilege,” whether or not an in-
4 specter general has conducted an investigation under
5 subsection (b), the head of that agency shall, at the
6 same time it asserts the privilege, issue a report to
7 authorized Members of Congress, accompanied by a
8 classified annex if necessary, describing the reasons
9 for the assertion, explaining why the court hearing
10 the matter does not have the ability to maintain the
11 protection of classified information related to the as-
12 sertion, detailing the steps the agency has taken to
13 arrive at a mutually agreeable settlement with the
14 employee or applicant for employment, setting forth
15 the date on which the classified information at issue
16 will be declassified, and providing all relevant infor-
17 mation about the underlying substantive matter.

18 “(d) CONSTRUCTION.—Nothing in this section may
19 be construed to authorize the discharge of, demotion of,
20 or discrimination against an employee for a disclosure
21 other than a disclosure protected by subsection (a) of this
22 section or to modify or derogate from a right or remedy
23 otherwise available to the employee or applicant for em-
24 ployment.

25 “(e) DEFINITIONS.—In this section:

1 “(1) The term “covered information,” including
2 classified information, is information that an em-
3 ployee reasonably believes to provide direct and spe-
4 cific evidence of—

5 “(A) a violation of any law, rule, or regula-
6 tion, or

7 “(B) gross mismanagement, a gross waste
8 of funds, an abuse of authority, or a substantial
9 and specific danger to public health or safety.

10 “(2) The term “covered agency” means one of
11 the following:

12 “(A) The Central Intelligence Agency.

13 “(B) The Defense Intelligence Agency.

14 “(C) The National Imagery and Mapping
15 Agency.

16 “(D) The National Security Agency.

17 “(E) The Federal Bureau of Investigation.

18 “(F) The National Reconnaissance Office.

19 “(G) Any other Executive agency, or ele-
20 ment or unit thereof, determined by the Presi-
21 dent under section 2302(a)(2)(C)(ii) of title 5,
22 United States Code, to have as its principal
23 function the conduct of foreign intelligence or
24 counterintelligence activities.

1 “(3) The term “authorized member of Con-
2 gress” means a member of the House Permanent
3 Select Committee on Intelligence, the Senate Select
4 Committee on Intelligence, the House Committee on
5 Government Reform, the Senate Committee on
6 Homeland Security and Governmental Affairs, and
7 the committees of the House of Representatives or
8 the Senate that have oversight over the program
9 about which the covered information is disclosed.”.

Union Calendar No. 249

109TH CONGRESS
2^D Session

H. R. 5112

[Report No. 109-445]

A BILL

To provide for reform in the operations of the
executive branch.

APRIL 27, 2006

Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed